IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 160 of 2000(A)

ST.302/1998 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE DT.29.4.1999.

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APPELLANT: COMPLAINANT

C.T.RAJAN,
CHALAKUNI THARAKANDI PARAMBA,
P.O. VENGERI, KOZHIKODE.

BY ADV. SRI.V.G.ARUN

RESPONDENTS: ACCUSED

M.E.SHAMSUDDIN, MEDAYIL PARAMBA,
MASKAR MANZIL, NEAR VALAYANAD TEMPLE,
BYE-PASS ROAD, CHERIYA MANKAVE,
P.O.MANKAVE, KOZHIKODE.

BY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 160 of 2000

Dated this the 21st day of February, 2007

Judgment

This appeal is filed by the complainant against acquittal of the accused under section 256 of the Code of Criminal Procedure. The complaint was filed alleging dishonour of the cheque given by the respondent for insufficiency of funds. The complaint was filed on 3.7.1998 and sworn statement was taken on 17.2.1999 and the case was posted to 29.4.1999. On 29.4.1999 the complainant/appellant could not attend the court as he was laid up due to viral fever and a petition seeking exemption was also prepared to be filed, but, unfortunately, the counsel for the petitioner could not reach the court in time to submit the petition and seek exemption when the case was called. Therefore, the court below acquitted the accused under section 256 (1) Cr. P.C. The impugned order is a stereo-typed order without application of mind. Even though accused can be acquitted under section 256 Cr. P.C. for the absence of the complainant, it should not be done mechanically. Here, posting was for return of summons and presence of complainant was not necessary. On the facts and

circumstances of the case, the impugned order is set aside and the matter is remanded.

The complainant shall appear before the trial court on 26.3.2007. Notice sent by this court was evaded. Fresh steps should be taken against the respondent accused.

Appeal is allowed by way of remand.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl. A. No.160 of 2000

Judgment

21-2-2007